

INDEPENDENT
TELEPHONE & TELECOMMUNICATIONS
ALLIANCE

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 17, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

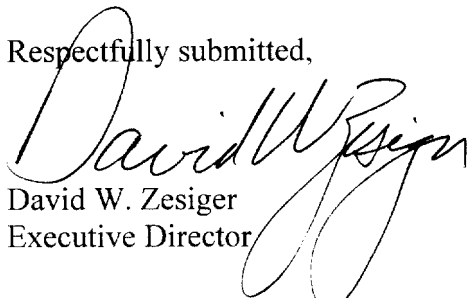
**Re: 1998 Biennial Regulatory Review Review of Accounting and Cost
Allocation Requirements, United States Telephone Association
Petition for Rule Making.
CC Docket No. 98-81
ASD File No. 98-64**

Dear Ms. Salas:

This letter is to advise you that the Independent Telephone and Telecommunications Alliance (ITTA) is submitting the attached Comments in the above-referenced proceeding. One original and four copies of the Comments are attached for filing with your office in accordance with the Commission's Notice of Proposed Rulemaking FCC 98-108 released June 17, 1998 and with Sections 1.415 and 1.419(b) of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419(b). Six additional copies are also attached for filing with the Chairman and Commissioners and the International Transcription Services (ITS).

Please contact me if you have any questions regarding this matter.

Respectfully submitted,


David W. Zesiger
Executive Director

Enclosures

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)	
)	
1998 Biennial Regulatory Review)	CC Docket No. 98-81
Review of Accounting and Cost)	
Allocation Requirements)	
)	
United States Telephone Association)	ASD File No. 98-64
Petition for Rulemaking)	

**Comments of
The Independent Telephone & Telecommunications Alliance**

On behalf of its midsize company members, the Independent Telephone & Telecommunications Alliance hereby files these comments in support of the Commission's proposed rulemaking. ITTA believes Commission action to reduce the regulatory burdens on midsize companies is more than justified under the statutory standards of Section 11 of the 1996 Act. Additionally, ITTA urges the Commission to act immediately on other forbearance measures raised in ITTA's separate Forbearance Petition, now procedurally ripe for Commission consideration. Implementation of deregulatory measures in both proceedings constitutes an essential first step in achieving congressional goals for a procompetitive, deregulatory national policy framework for the telecommunications industry.

1. The Commission's proposal to repeal or modify certain regulations is a step in the right direction. . .

In its Notice, the Commission proposes three sets of modifications to its current rules. First, it would increase the threshold determining the applicability of Class A accounting requirements from its current indexed level to \$7 billion in annual operating revenues.¹ Second, the Commission would adjust associated Cost Allocation Manual (CAM) requirements to reflect that adjusted threshold and the resulting applicability of Class B accounting requirements to all midsize companies. Third, the Commission would effect minor but useful accounting changes in five areas. ITTA supports each of these proposals and believes the Commission should implement these changes at the earliest practicable time.

The Commission has chosen to base its rulemaking on Section 11 of the 1996 Act.² That section provides:

- (a) BIENNIAL REVIEW OF REGULATIONS.- In every even-numbered year (beginning with 1998), the Commission –
 - (1) shall review all regulations issued under this Act in effect at the time of the review that apply to the operations or activities of any provider of telecommunications service; and
 - (2) shall determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service.
- (b) EFFECT OF DETERMINATION.- The Commission shall repeal or modify any regulation it determines to be no longer necessary in the public interest.

The rules proposed for modification clearly meet the first requirement. Parts 32 and 64 apply to midsize incumbent carriers, all of whom provide “telecommunications service”

¹ Congress subjected the revenue threshold for classification under 47 C.F.R. 32.11 to indexing for inflation in Section 402(c) of the Telecommunications Act of 1996.

² 47 U.S.C. 161.

as that term is defined in the 1996 Act.³ These rules, further, apply to the operations and activities of midsize companies, being expressly “designed to enable management and policymakers to assess results of operational and financial events.”⁴

The proposed modifications also meet the second requirement under Section 11. As ITTA pointed out in its Petition for Forbearance⁵ currently before the Commission under Section 10 of the 1996 Act,⁶ most midsize companies face actual or imminent competition in their major markets. The current petition of ATU Telecommunications for waiver of certain Part 69 pricing rules is a case in point.⁷ Absent a waiver, ATU faces loss of a major resale and access services customer to a facilities-based competitor, solely because of the artificial, asymmetrical pricing constraints imposed by Part 69 on ATU as an incumbent carrier. This loss is not hypothetical or speculative: ATU has already received written notification from the customer of a threatened change in service provider unless appropriate incentives for retention (primarily, term and volume discounts) are offered by ATU. This is the kind of “meaningful economic competition” contemplated by the statute and justifying repeal or modification of existing regulations.

In that vein, however, ITTA must disagree with the Commission’s assertion that midsize companies face lower levels of competition or engage in “lower volumes” of

³ 47 U.S.C. 153(46): “The term ‘telecommunications service’ means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.”

⁴ Notice of Proposed Rulemaking at 3.

⁵ See In the Matter of Petition for Forbearance for 2% Midsize Local Exchange Companies Filed by The Independent Telephone & Telecommunications Alliance, Petition for Forbearance, AAD 98-43, filed February 17, 1998, at 9-11 (“Forbearance Petition”).

⁶ 47 U.S.C. 160.

⁷ In the Matter of ATU Telecommunications Request for Waiver of Sections 69.106(b) and 69.124(b)(1) of the Commission’s Rules, CCB/CPD 98-40, filed June 22, 1998.

competitive transactions.⁸ To the contrary, as Commissioner Powell has remarked, midsize companies are frequently in the front lines of the competitive fight:

Just as importantly, mid-size independents are storming the beaches of innovation, both in terms of how some of these carriers market new products and services and in terms of how they employ new technologies. In the war to tear down the arcane regulatory walls that prevent firms from competing with other firms and from bringing customers the full benefits of a free market, I sometimes think of mid-size independents as our "special forces."⁹

The Commission's proposed actions under Section 11 would serve to recognize and to facilitate the competitive capabilities of midsize carriers, thereby resulting in direct benefits to consumers. Regulations that impede that result are "no longer in the public interest" and thus meet the statutory requirements for repeal or modification.

Additionally, as ITTA noted in its Reply Comments to its Forbearance Petition,¹⁰ many midsize companies already operate below the existing indexed threshold. These carriers currently follow the Class B accounting requirements. Nowhere in the pleading cycle associated with the Forbearance Petition did any party demonstrate that inapplicability of Class A requirements to such carriers impaired Commission oversight or worked to the detriment of the public interest. The absence of such proof in that proceeding reinforces the validity of the Commission's intended actions in this one.

Finally, ITTA observes that although the Commission's proposed modifications are intended to address "mid-sized incumbents LECs," the threshold proposed for demarcation (\$7 billion dollars) is apparently tied to no extrinsic standard or

⁸ Notice of Proposed Rulemaking, paragraph 5.

⁹ "Working Toward Independent's day: Mid-Size Carriers as the Special Forces of Deregulation." Remarks of Commissioner Michael K. Powell before the Independent Telephone Pioneer Association, Washington, D.C. at 1 (May 7, 1998)(as prepared for delivery).

¹⁰ Forbearance Petition, ITTA Reply Comments, filed May 18, 1998, at 7, 9, and 10.

point of reference. As ITTA has noted in many of its filings with the Commission, Congress recognized and defined midsize companies in Section 251(f)(2) of the 1996 Act. Under that provision, carriers with fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide are entitled to seek suspensions or modifications with respect to various interconnection duties under Section 251(b) and (c). Since the Commission is seeking here to suspend or modify the application of certain of its rules, the use of a 2% standard would be both logical and congruent with congressional designs for midsize carriers.

An example of the potential confusion engendered by the Notice's failure to explicitly define its new threshold for mid-sized ILECs arises in Section III of the Notice. Since the Notice only defines mid-sized ILECs in terms of an upper revenue limit of \$7 billion, in theory, it leaves open the possible interpretation that even smaller ILECs that earn appreciably less than the existing revenue threshold of \$112 million may be subject to these CAM requirements. This would of course substantially increase regulatory burdens for smaller ILECs who have never before faced CAM or CAM audit requirements. While such an increased regulatory burden for smaller ILECs is clearly neither intended by the Notice nor by Section 11 of the Telecommunications Act, the Commission should explicitly exclude this possibility in its final rulemaking.

2. . . .but it is clearly not enough.

Though a good initial step, more than justified by the facts and the public interest, the actions proposed in the Commission's rulemaking do not go nearly as far as they could. Apparently recognizing this possibility, paragraph 19 of the Notice seeks

“proposals for other accounts or filing requirements that should be reduced or eliminated.”

ITTA’s Forbearance Petition lists nine such areas where forbearance is fully justified. As reflected in the summary of that Petition appended hereto in Attachment A and incorporated by reference herein, much more can be done to reduce the uneconomic drag which unnecessary regulation imposes on midsize carriers. As demonstrated in the filings made in that proceeding, those requirements could be “reduced or eliminated” with the result that competition would be enhanced and the public interest promoted.

ITTA notes that Commission action in this proceeding is not the equivalent of, nor does it substitute for, action with respect to the Forbearance Petition. As ITTA discussed in both the Petition and its Reply Comments related thereto, the standard of review to be applied under Section 11 is different from that contained in Section 10, under which ITTA filed its Petition. The test under Section 11 is retrospective in nature and relies “on the result of meaningful economic competition.” Section 10, to the contrary, is prospective in nature. It looks to acts of forbearance and regulatory flexibility which “will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.”¹¹

Therefore, adoption of the modifications proposed here may moot some of the issues raised in ITTA’s Forbearance Petition, but would not eliminate the need to address the remaining matters in accordance with the provisions of Section 10. Further, any decision by the Commission against adoption of the modifications proposed in this

¹¹ 47 U.S.C. 160(b).

rulemaking would have no collateral effect on ITTA's Petition, because the standards applicable here are different from those applicable in that proceeding. Put differently, Section 11 cannot properly be interposed to circumvent the standard of review imposed under Section 10. Since the pleading cycle for its Section 10 Petition is long since concluded, ITTA urges timely action on its Petition irrespective of the Commission's further deliberations in this proceeding.

Conclusion

ITTA recognizes that deregulatory measures present the Commission with new challenges. As Commissioner Powell remarked earlier this year:

One reason that policymakers find it difficult, even after setting appropriate ground rules, to allow the market to run its course is, ironically, their fear of ceding control to the marketplace. The Act commands us all to move away from regulation and toward a world in which the market, rather than bureaucracy, determines how communications resources should be utilized. Yet, so often, we cannot actually bring ourselves to let go, to jump off our regulatory perch.¹²

Congress, however, has already determined that deregulation is an indispensable adjunct to competition and to realization of the consumer benefits which competition promises to provide. The statute offers two separate paths toward deregulation – one Commission initiated and retrospective in nature under Section 11, and one carrier initiated and prospective under Section 10. In its current rulemaking, and in ITTA's Forbearance Petition proceeding, the Commission has the opportunity to implement both provisions

¹² "Technology and Regulatory Thinking: Albert Einstein's Warning," Remarks of Commissioner Michael K. Powell before the Legg Mason Investor Workshop, Washington, D.C. at 3 (March 13, 1998) (as prepared for delivery).

and to clearly demonstrate its intention to carry out the congressional design for deregulation. ITTA urges the Commission to do so in timely fashion.

Respectfully submitted,

**THE INDEPENDENT TELEPHONE &
TELECOMMUNICATIONS ALLIANCE**

By: 

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By: 

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July 17, 1998

APPENDIX A

Comments of
The Independent Telephone & Telecommunications Alliance

APPENDIX A

DUPLICATE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEB 17 '98
FEDERAL COMMUNICATIONS
COMMISSION
CLERK

In the Matter of)
)
Petition for Forbearance for)
2% Mid-Size)
Local Exchange Companies)

**PETITION FOR FORBEARANCE
OF THE
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

David W. Zesiger

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TELECOMMUNICATIONS ALLIANCE**
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February 17, 1998

EXECUTIVE SUMMARY

The Independent Telephone and Telecommunications Alliance ("ITTA") asks the Commission to forbear from applying each of the nine regulations referenced herein to 2% mid-size incumbent local exchange carriers ("2% mid-size companies"), those mid-size companies serving less than 2 percent of the nation's access lines. Reducing these unnecessary and duplicative regulations will promote competition by freeing mid-size companies to devote greater resources to improving customer service, investing in network upgrades and developing new service offerings. By forbearing from applying these regulations, the FCC can materially advance the prospect of telecommunications competition in accord with the pro-competitive and deregulatory spirit of the 1996 Telecommunications Act and with the "common sense" regulatory policy advocated by Chairman Kennard.

The 1996 Act profoundly altered the local exchange company marketplace and the repercussions are acutely felt by mid-size companies. No longer could an incumbent local exchange carrier ("ILEC") depend on the legal protections of a statutorily mandated marketplace. Never again would an ILEC business plan presume the stability and unique characteristics of a legally protected monopoly. While competition did not instantaneously take hold overnight and while a variety of operational and technical issues still must be addressed, it is undeniable that on February 8, 1996, the world became a much different place for the ILEC industry.

This petition requests relief specifically for 2% mid-size companies given the disproportionate burden each of these regulations imposes on these companies. "One-size-fits-all" regulation typically results in substantially greater compliance burdens on mid-size companies than on larger ILECs. This is particularly true when costs are measured on a per-

line or per-customer basis, yielding mid-size company compliance costs that can easily total many multiples of those of the largest companies.

Two percent mid-size companies hold an unusual position in the telecommunications marketplace. They typically confront actual and potential competitors many times their size with vastly greater resources, more extensive capabilities, and highly sophisticated infrastructures. Thus, it is all the more important that the Commission remove unnecessary regulatory burdens if it is to effectively promote competition.

Moreover, the demands on the limited resources of mid-size companies continue to mount. New costing and pricing requirements for interconnection proceedings; operational and technical demands for local number portability, operations support systems and other services; and the expense of training personnel for "first time ever" interconnection negotiations and customer retention and marketing activities, all add to the burden. Despite the massive changes of the past two years, rather than reducing the regulatory burden on mid-size ILECs, in many instances the FCC has increased them. Mid-size companies can no longer bear this regulatory overload.

The Commission's reporting, recordkeeping, procedural and structural requirements cited in this petition are not necessary to fulfill the fundamental purposes of the Act, such as preventing unreasonable or discriminatory pricing. None of the requests submitted in this petition seeks forbearance from the Communications Act's or the Commission's substantive regulations. Furthermore, the Commission already has mechanisms in place to detect and eliminate anticompetitive practices. Forbearance from the regulations cited herein will contribute materially to increasing competition and leveling the playing field between mid-size ILECs and their competitors.

A class of telecommunications carriers is entitled to seek forbearance from the application of any regulation or provision of the Act if certain standards are met. Section 10(a) of the 1996 Act mandates that the Commission forbear from enforcing regulations where (1) the regulations are not necessary to ensure just and reasonable rates and to ensure against unreasonable discrimination; (2) the regulations are not necessary to protect consumers; and (3) forbearance is in the public interest. ITTA is seeking relief for one such class of carriers -- its mid-size telephone company members -- based upon their particular circumstances.

The test for forbearance is clearly met for 2% mid-size companies with regard to each of the nine regulations referenced herein, which are grouped into three broad categories: (1) reporting and recordkeeping requirements; (2) procedural requirements; and (3) structural and pre-approval requirements. The following is a list of those issues, and the reasons why forbearance is justified by marketplace considerations and other public interest factors.

Reporting and Recordkeeping Requirements

1. **Class A Accounting Requirements and CAM Filings and Audits Should be Eliminated For 2% Mid-Size Companies.**
 - The current indexed revenue threshold has captured smaller telcos that were never intended to comply with these requirements.
 - Consumers are protected because carriers would still have to comply with Class B accounting, cost allocation, and affiliate transaction rules.
2. **ARMIS Financial and Operating Reports Should Be Eliminated For 2% Mid-Size Companies.**
 - These reports are unnecessary given that existing Commission mechanisms prevent improper cost-allocation and discriminatory pricing.
 - Eliminating ARMIS reports will improve mid-size companies' operating efficiencies and assist their efforts to offer competitive and innovative services.
 - To an increasing degree, actual and potential competition check pricing behavior that can harm consumers.
3. **Quality of Service Report 43-05 Should Be Eliminated For 2% Mid-Size Companies.**
 - The service quality report unnecessarily duplicates state quality of service reporting requirements.

- The report can be safely eliminated because quality of service has not been a problem under price caps since the regulation's inception.
- The service quality report is costly and administratively cumbersome to produce, thus hindering mid-size companies' efforts to offer competitive services.
- To an increasing degree, competition reinforces the natural tendency to ensure that consumers receive quality service.

4. Detailed Tariff Cost Support Materials Should Be Eliminated For 2% Mid-Size Companies.

- Challenges may be filed to objectionable rates, either through the complaint process or pre-effective petitions to deny based on more simplified cost support materials.
- Compilation of this information delays the delivery of new services to the public.
- To an increasing degree, actual and potential competition preclude pricing behavior that can harm consumers.

Procedural Requirements

5. Section 214 Applications Should Not Be Required For "New" Lines Added by Rate-of-Return Carriers.

- The 1996 Telecommunications Act expressly eliminated applications for line extensions, out of recognition that they delayed facilities deployment.
- "Gold plating" is impractical in a competitive marketplace.
- Section 214 applications slow service to the public.
- The applications expose competitively sensitive information not required of competitors, handicapping certain mid-size ILECs.

6. Part 69 Waiver Requests Should Be Abolished For 2% Mid-Size Companies.

- Part 69 waiver requests are unnecessary since the Commission can evaluate new rate elements through the tariff review process.
- Waiver requests increase costs and slow services to the public, in violation of the streamlined tariff review process added by the 1996 Act.

7. Detailed Merger and Acquisition Information Requirements Should be Eliminated for Mergers Between 2 % Carriers or Between a 2% Company and a Non-ILEC.

- The *Bell-Atlantic/NYNEX* economic and marketplace information requirements are unnecessary because mergers of 2 percent companies are unlikely to adversely affect competition.
- Antitrust review by the Department of Justice and the Federal Trade Commission is more than adequate to protect consumers or prevent an unreasonable impact on rates.
- The FCC's traditional public interest considerations can be addressed without such detailed reporting requirements and the FCC retains the authority to request the necessary information on a case-by-case basis.

Structural and Pre-approval Requirements

8. **Structural Separation for In-Region Interexchange Services Should be Eliminated For 2% Mid-Size Companies.**
 - Mid-size ILECs cannot harm competition because of their small market share in the interexchange market, which is already dominated by well-entrenched IXC's.
 - Other safeguards prevent cross-subsidization and discriminatory behavior.
 - Eliminating structural separation can decrease carrier costs and increase operating efficiencies that redound to the benefit of consumers.
 - Actual and potential competition increasingly precludes mid-size ILECs from engaging in a price squeeze or unreasonably increasing access pricing.
9. **Structural Separation for In-Region CMRS Services Should Be Eliminated For 2% Mid-Size Companies.**
 - Other safeguards prevent cross-subsidization and nondiscriminatory behavior.
 - Mid-size ILECs cannot harm competition because a number of wireless carriers are well entrenched and telephone and wireless "footprints" are so different that any attempted cross-subsidy would fail to achieve any anticompetitive effect.
 - Eliminating structural separation will decrease carrier costs and increase operating efficiencies.

The 1996 Act irrevocably changed the telecommunications marketplace. This circumstance, coupled with the existence of other FCC and state law and procedures, clearly eliminates the need for each of the nine regulations identified above as to 2% mid-size companies. The FCC should, therefore, exercise its clear legislative mandate to eliminate each of these unnecessary regulations as to these companies and promote their competitive efforts.